

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

) MM Docket No. 91-10

WHITE BROADCASTING PARTNERSHIP
et al.

) File No. BPH-891214MM
)

For Construction Permit for a New FM Station
Station on Channel 289A in Baldwin, Florida

RECEIVED

To: Hon. Edward Luton, Administrative Law Judge

SEP 23 1991

Federal Communications Commission
Office of the Secretary

**MOTION TO ENLARGE ISSUES AGAINST
NORTHEAST FLORIDA BROADCASTING CORP.**

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SUMMARY

On the witness stand, Lillian Holt continued a longstanding pattern of gross misrepresentations and puffery concerning even so simple a matter as her residence addresses. By repeatedly creating the impression that she lived in the service area when she didn't, or would move there when she won't, Ms. Holt has shown herself to be unqualified for any broadcast franchise. Even when caught red handed on the witness stand, Ms. Holt showed no remorse.

Northeast Florida Broadcasting Corp. ("NEF") is a creature of Joseph Mims, not its putative owners, Lillian Holt and Dorothy Wade. Mr. Mims knew and did almost everything. Ms. Wade promised financing, but knew little of Ms. Holt or Mr. Mims. Ms. Holt did little and knew nothing.

While prosecution financing may be secure, construction financing isn't. Ms. Wade, the bank's customer, is not securing the bank's funds, and the bank knows nothing of Ms. Holt. The bank's letter is a classic last-minute accommodation for Ms. Wade. The probability that the funds would ever be drawn down by NEF is zero.

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Peaches Broadcasting, Ltd. ("Peaches"), by counsel and
pursuant to Section 1.229 of the Commission's Rules, respectfully
moves to enlarge the issues against Northeast Florida Broadcasting
Company ("NEF") as follows:

1. To determine whether Lillian Holt misrepresented her local residences and their proximity to the 1 mV/m and 3.16 mV/m contours;
2. To determine whether Joseph Mims is a real party in interest in NEF;
3. To determine whether the legal and/or organizational structure of NEF is a sham;
4. To determine whether NEF is financially qualified to construct and operate its proposed station;
5. To determine whether NEF falsely certified that it was financially qualified to construct and operate its proposed station; and
6. To determine, in light of the evidence adduced under the above issues, whether NEF possesses the basic qualifications to become a Commission licensee.

1/ This Motion is timely filed. On September 6, 1991, 17 days ago, Peaches received copies of the hearing transcript in this case. The 15th day from September 6 was a Saturday; this Motion is being filed on a Monday. However, even were this Motion untimely, it raises matters of probable decisional significance and therefore should be considered in any event.

I. MISREPRESENTATIONS CONCERNING LOCAL ADDRESSES

Peaches will demonstrate that Lillian Holt, NEF's General Partner, deliberately and repeatedly misrepresented her residence addresses to make her appear to reside closer to the community of license than she actually did, and to make her appear to reside there longer than she did. This is not a matter on which she could have been confused. Ms. Holt is an intelligent woman who not only knows where she has resided, she knows the meaning of local residence credit.

When confronted with this evidence, she dissembled, gave extremely evasive answers, and exhibited an utter lack of concern for the effect of her misrepresentations on the integrity of the proceeding. Even without reaching any other questions in this case, Ms. Holt's gross misconduct in open court, under oath, disqualifies NEF from holding a broadcast license.

To appreciate what Ms. Holt attempted to foist on the Commission, it is first necessary to examine the representations she has made under penalty of perjury in light of her actual addresses.

Ms. Holt had had three different addresses since moving to Jacksonville in 1985. Those addresses, and the relationship between the addresses and the 1 mV/m contour, drawn from NEF Ex. 4 (submitted September 9, 1991, and appended as Ex. 4 hereto) are as follows:

<u>Address</u>	<u>Relationship to 1 mV/m Contour</u>
7235 Shareth Dr. S.	0.25 miles inside contour
3716 Bramble Road	1.45 miles inside contour
2567 College Street	2.35 miles outside contour

Ms. Holt's testimony has given us no less than seven different versions of her local residences and her plans to relocate within the service area -- perhaps a comparative hearing "Olympic record." To this day, Peaches does not know whether any of those representations is true.

Version 1: NEF Application, 12/14/89. NEF's application, Exhibit B, states that "Ms. Holt has resided within Jacksonville, Florida since February, 1985 and will claim service area local residence credit." See Exhibit 5 hereto. Obviously, the use of this well known term of art deliberately left the parties with the impression that Ms. Holt resided in the station's 1 mV/m service contour.

However, Ms. Holt testified that the words "service area local residence credit" in NEF's application were "primarily" her words. Tr. 316.2/ She testified that she meant "the broadcast area of the radio station, the listening area. That was my understanding." Tr. 315. She did not asked her engineer or lawyer the meaning of "service area local residence credit." Tr. 316.

Version 2: Amendment, 5/7/91. NEF amended its application on May 7, 1991 with a March 31, 1991 declaration of Ms. Holt stating that her current address was 2567 College Street. The Amendment was supported by a Petition for Leave to Amend stating that "the amendment is timely filed" at a 30-day, \$1.65 amendment.

2/ References to the transcript of the August 20-22, 1991 hearing (excerpts supplied at Exhibit 1 hereto) are "Tr." References to the June 25, 1991 deposition of Ms. Holt are "Holt Dep. Tr." (excerpts supplied at Exhibit 2 hereto). References to the June 26, 1991 deposition of NEF's limited partner, Dorothy Wade, are "Wade Dep. Tr." (excerpts supplied at Exhibit 3 hereto).

Thus, NEF deliberately left the parties with the impression that Ms. Holt had resided at College Street (outside the contour) only since March, 1991. As shown below, she moved there in September, 1990, making the May 7, 1991 amendment at least six months late.

Version 3: Integration and Diversification

Statement, 5/10/91. This Statement represents that "Ms. Holt has resided in Jacksonville, Florida within the 3.16 mV/m contour of the proposed facility since February, 1985 and will claim credit for local residence." Those were not Ms. Holt's words, but she signed the Statement. Tr. 317; see Exhibit 7 hereto. At the time, she had no understanding what the 3.16 mV/m contour was, and she didn't ask anyone what it meant before she signed the statement. Tr. 318. As shown in Exhibit 4 to NEF's application (also Exhibit 4 hereto), Ms. Holt has never resided anywhere near the 3.16 mV/m contour. Apparently, she wanted the other applicants to think that she did.

Version 4: Direct Case Ex. 1, 7/23/91. This exhibit represents that "Ms. Holt has resided in Jacksonville, Florida within the 1 mV/m contour of the proposed facility since February, 1985. If Northeast Florida is awarded the construction permit, she has pledged to continue residing in Jacksonville, Florida. See Exhibit 8 hereto. Those were not her words. Tr. 319. A contradictory sentence appears in NEF Direct Case Exhibit 2 (p. 2 to the effect that her current residence "may be outside the 1 mv/m contour." While realizing that the statements were contradictory, Ms. Holt could not explain the contradiction. Tr. 320.

Version 5: Direct Case Ex. 2, 7/23/91. This exhibit represents that "[b]etween February, 1985 and September 1990, I resided within the 1.0 mV/m contour of Northeast Florida's proposed facility. Between February, 1985 and February, 1990, I resided at 7235 Sharbeth Drive South. After February 1990, I moved to 3715 Bramble Road, where I lived until September, 1990. I now reside at 2567 College Street in Jacksonville, Florida. My current residence may be outside the projected 1 mV/m contour of the proposed station....If Northeast Florida is awarded the construction permit, I will relocate to a residence that is within the 1 mV/m contour of the proposed facility." See Exhibit 9 hereto.

That thrice-revised testimony was almost entirely false, as explained infra in discussing Ms. Holt's hearing testimony.

Version 6: Hearing, 8/21/91 (Residence Locations). Ms. Holt's hearing testimony shows that she resided within the 1 mV/m contour for only one year, although NEF Direct Case Ex. 2 claimed such residence for a period of five years. Ms. Holt admitted that he had resided at 7235 Sharbeth Dr. S. only from February, 1989 to February, 1990 -- and not from February, 1985 to February, 1990 as stated in NEF Ex. 2 at 1. Tr. 302-303 (Testimony of Lillian Holt). She admitted that she lived at 2567 College Street between February 1985 and February, 1989. Tr. 304.

Ms. Holt further testified that from February, 1990 to September, 1990, she lived at Bramble Road, and from October, 1990 to the date of the hearing she lived at College Street. Tr. 304.

Although Ms. Holt knew she was going to be a witness in court and sponsor direct case testimony, she failed to instruct her counsel to correct that testimony before she took the stand. Thus, the testimony was introduced into evidence without any acknowledgement by counsel that the testimony was false.^{3/} Since testimony is not always the subject of crossexamination, Ms. Holt can be presumed to have intended her direct case testimony, if unchallenged, to be relied upon for findings and conclusions.

Ms. Holt was sitting in the back of the courtroom to observe a lengthy debate relating to the admissibility of her direct case exhibits. Thus, when she testified, she was keenly aware that she was about to be asked questions about her residence claims. On taking the stand and being administered the oath, the following happened.

Ms. Holt first acknowledged that College Street is outside the 1 mV/m contour, while Sharbeth Drive was inside the contour. Tr. 305-306. Furthermore, Ms. Holt admitted that she had been aware that College Street was farther away from Baldwin than was Sharbeth Drive. Tr. 306.

^{3/} NEF's counsel, who has great integrity, would never knowingly proffer false testimony. Ms. Holt obviously did not tell him the truth.

When confronted with the inconsistency between NEF Ex. 2 and her verbal testimony, Ms. Holt could not have been less responsive:

Q. Now, is that why you failed in your direct case to identify yourself as a residence of College Street for four of those first five years of your residence?

A. Could you repeat that?

Q. Do you understand the question?

A. Could you repeat the question?

Q. Well, I'll ask it another way. Why did you represent that you lived on College Street only since September 1990, when in fact you've lived there most of the time you've been in Jacksonville?

A. I don't understand your question.

Q. Let me ask it again. Why did you say in your exhibit number 2 that you had only lived on College Street one year, when in fact, you've lived there nearly five years?

A. I don't think it says that, according to this document that I have in front of me.

A. You signed exhibit number 2, didn't you?

A. Yes.

Q. You read it before you signed it?

A. Yes.

Q. Now, does it not say that you only resided on College Street since September 1990?

A. No.

Q. Let me direct you to the first full sentence on the top of Page Two. Does that clarify this in your mind?

A. I'm reading. Yes.

Q. That says I now reside at 2567 College Street. And the last date given was until September 1990 --

A. That's not what that says.

Q. This says I now reside at 2567 College Street in Jacksonville, Florida.

A. Is your testimony that one could read that and believe that you lived there for five years?

A. No.

Q. Then why didn't you say between February 1985 and February 1989, I lived at College Street, if that was true? Why did you tell us you lived on Sharbeth Drive?

A. Because I did.

Q. You just testified that you lived on College Street, not on Sharbeth Drive. You lived on Sharbeth Drive for just one year, not four.

A. So? That's what it says. I'm not understanding this. Because it says between February 1985 and February 1990, I resided at 7235 Sharbeth Drive.

Q. Now, I don't want the reporter to read it back, let me just ask if counsel recalls this. In response to the first question I asked you, didn't you testify that from February '85 to February '89, you lived at College Street, then from February '89, you moved to Sharbeth Drive. Wasn't that your testimony?

A. No. Not that I can recall.

Q. What do you recall your testimony being?

A. Between February 1985 and February 1990, I resided at 7235 Sharbeth Drive. Between that's what I remember.

Q. Now, didn't I ask you whether you had any other addresses during that time, where you lived, any other homes?

A. Yes, you did.

Q. And you said, yes, and I asked you where were they and you said between February '85 and February '89, you lived on College Street and you moved to Sharbeth Drive?

A. Right.

Q. I'm asking you why didn't you say that in your direct case if that is in fact where you lived?

A. I answered your question.

Tr. 306-309.

Version 7: Hearing Testimony, 8/21/91 (Relocation Plans). As noted above, NEF's Direct Case Ex. 2 (promising relocation within the 1 mV/v contour) varies from NEF's application (which contains no promise to relocate). See Exhibit 5 hereto. When asked about this at the hearing, Ms. Holt gave yet another version of her relocation plans, maintaining that her "intent was to move to Baldwin, Florida upon receiving a construction permit." Tr. 330. Acknowledging that Baldwin is a separate incorporated community, Ms. Holt testified as follows:

- A. Okay. Now, if it says, she has pledged to continue residing in Jacksonville, Florida but your intent was to move to --
- A. Closer to the 70 DBU. That's my intent, if I'm reading it correctly.
- Q. No, I'm not asking you whether you're reading it correctly. I'm asking you what you intended.
- A. I have no intent -- I had no and have no intention of leaving Jacksonville, Florida. My intention, if I receive a construction permit, is to move closer to, what is it, the 3.6 MVM. That's my intention.

Tr. 330-331.

Ms. Holt's intent to deceive the Commission is clear from her hearing testimony. Ms. Holt testified that she now appreciates the importance to her case of being considered a local resident or as close to a local residence as possible. Tr. 322. However, she also maintained that at the time she filed the application, she did not understand the importance of local residency to her application. Tr. 322.

That claim of ignorance is not credible. On December 8, 1989, five days before she signed the application, Ms. Holt received a memorandum from Joseph Mims (discussed infra) setting out those comparative preferences. See Exhibit 10 hereto. Mr. Mims' memorandum states that there is a preference for "[b]eing a resident of the local community in which the new FM station is allocated for" [sic]." Mr. Mims also met with Ms. Holt at the Urban League to go over the memorandum. Tr. 335. Nonetheless, Ms. Holt testified that the memorandum did not make her aware of the importance of being a local resident. Tr. 325-326. The following exchange occurred at the hearing:

Q. Isn't it a fact that when you received this fax you became aware that it was important to be a resident of the local community if you were a broadcast applicant?

A. Of a local community?

Q. Of the local community where the station was?

A. No.

Q. Have you ever been aware of that fact?

A. Maybe you need to clarify your --

Q. Why do you think Mr. Mims was calling you in Jacksonville, Florida rather than just filing the application himself from Texas?

A. I don't know.

Q. Did you ask him?

A. No.

Q. Did you -- you mean Mr. Mims didn't tell you that he wanted to identify local people?

A. Yes.

Q. He did tell you he wanted to identify local people?

A. Yes.

Q. And, in fact, [he] considered a few other people besides yourself?

A. Maybe I need some clarification on local.

Q. In the area near where the station is.

A. In or near the station, yes.

Q. Now, again, I'll ask if your memory is refreshed. Isn't it a fact that you knew that it was important to be able to show some connection, local residence, close to local residence -- that's why he didn't apply himself from Texas. Isn't that right?

A. I don't know why he didn't apply himself from Texas.

Q. Why didn't he call [the] San Antonio Urban League?

A. I don't know why.

Tr. 325-327.

Shortly thereafter, confronted with the plain words of Mr. Mims' December 8, 1989 memorandum, Ms. Holt changed her testimony and admitted that she knew local residence was important:

Q. So you were aware that this Commission considered localism important, however defined?

A. Yes.

Q. And that was why it was important to have a local person apply?

A. Yes.

Q. And, in fact, that is why it's important to an application's chances for success to be as close to the community of license as possible, isn't that right?

A. Yes.

Tr. 325-327.

This -- finally -- established that Ms. Holt knew local residence was important, but deliberately claimed service area credit without checking to see if she was actually entitled to it. What is unfortunate is that Ms. Holt dissembled so assiduously during the hearing while at her deposition she gave a straight answer to the same question:

Q. Was it your understanding after speaking with Mr. Mims that the Commission preferred local residents?

A. Yes.

Q. Okay. Did he explain why they prefer local residents?

A. Yes.

Q. And what was the explanation?

A. I don't know if this is it specifically, if I could recall exactly, but it's so that the one would have the knowledge of the community in which it would be serving [sic].

Holt Dep. Tr. 55-56.

Of course this raises the question of whether Ms. Holt cared about the integrity of the comparative process. Here is her testimony on how much she cared:

Q. Now, you recognized that there were going to be other applicants in this case, isn't that right?

A. I assumed that [there] would be.

Q. You recognized that they were entitled to know correctly how you would evaluate your local residence. Isn't that correct.

A. Could you repeat that?

Q. You knew that those other applicants were entitled to know, correctly and truthfully, how to evaluate your local residence claims.

A. No, I did not know that.

Q. You would have wanted -- you would have been rather upset if another applicant had represented itself to be closer to Baldwin than it really was, isn't that right?

* * *

Q. If one of the other applicants had represented that it was farther away from Baldwin than it really was, you would have been upset, wouldn't you?

A. No. I would have been, no.

Tr. 328-329.

Discussion.

The record set out above shows that Lillian Holt:

- (1) falsely stated in her application that she resided in the service area since February, 1985 when actually she had resided there less than a year when the application was filed;
- (2) filed a May, 1991 amendment to her application leaving the false impression that she had relocated outside the service area in March, 1991 when she had actually relocated outside the service area in September, 1990;
- (3) falsely stated in NEF's Integration and Diversification Statement that she had resided within the 3.16 mV/m contour for five years, when she has never lived anywhere near that contour;
- (4) falsely stated in NEF Direct Exhibit 1 that she had resided in the 1 mV/m contour since February, 1985 rather than just since February, 1989;
- (5) falsely stated in NEF Direct Exhibit 2 that she had resided at a specific address within the 1 mV/m contour since February, 1985 rather than just since February, 1989;
- (6) falsely stated in her hearing testimony that she would relocate to Baldwin when actually she never intended to leave Jacksonville;
- (7) dissembled and provided evasive testimony repeatedly during the hearing when asked to explain all of the above false statements; and
- (8) exhibited no remorse whatsoever, maintaining at the hearing that it should not matter to the other applicants that she had given false written testimony.

Representations about an applicant's local residences are seldom challenged. Opposing applicants generally can rely on another applicant to truthfully state where she lives.^{4/} Thus, Ms. Holt can be presumed to have intended that her representations would be unchallenged, and would be relied upon by the court and the other applicants for the truth of the matters asserted.

^{4/} Peaches does not know why Ms. Holt changed addresses. The reason -- whatever it is -- is irrelevant to this proceeding.

Since Ms. Holt's representations were untrue, other applicants have already been prejudiced. Their discovery and trial strategy were distorted by their erroneous impression that Ms. Holt lived in the service area.

Here we have an applicant who doesn't care what the truth is. Ms. Holt's false written and oral testimony occurred so repeatedly, and in each instance was geared to puffing rather than deflating NEF's apparent qualifications. False testimony on the date of a civic activity has been held to be disqualifying, Georgia Public Telecommunications Commission, 6 FCC Rcd 2841, 2864 (ALJ 1991); thus, false testimony on something more fundamental, such as a local residence, should be even more clearly disqualifying. Moreover, false testimony in open court is always disqualifying. See Old Time Religion Hour, Inc., 95 FCC2d 713, 719 (Rev. Bd. 1983); cf. RKO General, Inc. v. FCC, 670 F.2d 215, 234 (D.C. Cir. 1981). On this basis alone, NEF is utterly unqualified for broadcast stewardship.

II. REAL PARTY AND SHAM ISSUES

Peaches will demonstrate below that NEF is a sham applicant formed completely dominated by real party in interest Joseph Mims.

Joseph Mims is a professional broadcast applicant and application "fixer." He has had a role in setting up sham applications in Shreveport, Macon and Beaumont, possibly among other cities.

The record in this case shows that Mr. Mims completely orchestrated NEF's application. He knew and arranged everything, The pawns in NEF's application -- Lillian Holt and Dorothy Wade -- know almost nothing about broadcasting, about the application process, about Mr. Mims, or even about each other.

Ms. Holt signed NEF's application on December 13, 1989. Tr. 332. It was a six day project. Joseph Mims called Ms. Holt at the Urban League on approximately December 7, 1991. Tr. 332. He was a stranger to Ms. Holt. Tr. 324.

On December 8, 1989, he faxed Ms. Holt an outline entitled "Federal Communications Commission FM Stations Application Process." Tr. 322, 325. Mr. Mims' name nowhere appears on the document. It is typed in the same single spaced Courier 12 type used on most FCC documents, although the document nowhere reveals that it isn't an official FCC document. See Exhibit 10 hereto. Indeed, Ms. Holt doesn't know whether it was an FCC document. Holt Dep. Tr. 10-11.

On receiving Mr. Mims' December 8, 1989 fax, Ms. Holt approached her employer at the Urban League, Ronny Ferguson, and discussed whether two other Urban League employees might be interested in applying for the Baldwin permit. Tr. 333. Mr. Ferguson felt they would not be interested. Tr. 333. Ms. Holt then "[d]etermined that I could do this myself." Tr. 334. When Mr. Mims called a second time, Ms. Holt told him she wanted to be involved. Holt Dep. Tr. 9-10.

On Saturday, December 9, 1989, Ms. Holt met with Mr. Mims in Jacksonville. Tr. 335. She did not know if he visited with anyone else. Tr. 336. She did not know on whose behalf he was there. Tr. 336, Holt Dep. Tr. 29. She did not know whether he worked for a broadcast station; was a broadcaster; was an engineer; where he lived, what his address was, or what he did for a living. Holt Dep. Tr. 6, 12, 15.

Mr. Holt knew that Mr. Mims had been involved in other FM applications (Tr. 338-339) but she never asked him if he had any media interests of his own. Tr. 339. She did not ask him for a resume or ask why he wanted to talk to her. Tr. 370. Her explanation for not asking for a resume is that "Resumes can be fabricated just like anything else. Holt Dep. Tr. 112.^{5/}

Mr. Mims' suggestions to Ms. Holt determined with razor-sharp precision the form NEF would take. Mr. Mims gave Ms. Holt two names of potential investors, one of whom was Ms. Wade. Ms. Holt did not bother calling the other person. Tr. 337, 367-368. Mr. Mims suggested counsel (Tr. 344) and the engineer, Clyde Gurley (Tr. 344; Holt Dep. Tr. 21-22.) Ms. Holt retained Mr. Gurley, the next day, Sunday, December 10. Exhibit 11 hereto. Mr. Gurley, in turn, suggested a site firm, TELSA, which had already procured NEF's site. Tr. 344. The site was procured December 6, 1989, a day before Ms. Holt's initial contact with Mr. Mims. Tr. 346.

A March 30, 1990 letter from Ms. Wade to Ms. Holt (Exhibit 14 hereto) sheds some light on how Mr. Mims operated. The letter contains a suggestion that Ms. Holt "may wish to consider partial payment to Mr. Gurley and our attorney. Both of these gentlemen have an on-going relationship with our media consultant and know they will be paid." Tr. 396.

^{5/} At least Ms. Holt was consistent in her nonreliance on resumes. She didn't send her own resume to Ms. Wade either. Hopt Dep. Tr. 119-120.

While Ms. Wade knew that Mr. Mims apparently had arranged for Mr. Winston and Mr. Gurley to get paid, neither Ms. Holt nor Ms. Wade had any idea how Mr. Mims himself was getting paid. Ms. Holt did not pay Mr. Wade, and she does not know if he has ever been paid, or who paid for him to visit her in Jacksonville in 1989. Tr. 336-337; Holt Dep. Tr. 16, 28. Ms. Wade never paid Mr. Mims; she doesn't know who did, nor does she know who is responsible for paying him or if he will receive a bonus later. Tr. 383; Wade Dep. Tr. 17-18, 40-42, 58, 60.

For her part, Ms. Holt did little to assume the normal responsibilities of general partners. Ms. Holt had about three or four conversations with Ms. Wade, during which they never discussed whether Ms. Wade had interests in any other applications. Tr. 339. Ms. Holt did not know why Ms. Wade had all of the nonvoting stock. Holt Dep. Tr. 69. Ms. Holt doesn't know what she would be entitled to if the station is sold. Holt Dep. Tr. 107.

Ms. Holt never spoke with the site owner. Tr. 345; Holt Dep. Tr. 50-51. She never paid the site firm. Tr. 346. Her contribution at the time of the application was about \$250. Tr. 348. Her total contribution has been about \$850. Tr. 348. She is only required to put up \$1,000. Holt Dep. Tr. 82-83, 106. The budget (Exhibit 12 hereto) was prepared by counsel, and Ms. Holt could not state "exactly what specific instructions" she gave counsel in preparing the budget. Tr. 354. Her only role in obtaining financing was to give a personal financial statement (never supplied in document production) to Dorothy Wade (Tr. 351); however, that document, if it exists, was not supplied in document production. The bank letter (Exhibit 18 hereto) was obtained by Ms. Wade from Ms. Wade's bank. Tr. 353.

Ms. Holt did not offer security for repayment of Ms. Wade's \$203,000 loan for prosecution expenses, and the loan will not be repaid if NEF does not prevail. Tr. 350; Holt Dep. Tr. 83, 118. Ms. Holt did not "recall exactly" how it came to pass that Ms. Wade committed the \$203,000. Holt Dep. Tr. 43. Ms. Holt admitted that Ms. Wade "didn't know me that well." Holt Dep. Tr. 118-119.

After the application was filed, Ms. Holt completely disengaged herself from NEF. After filing the application, Ms. Holt had only three material tasks to perform: (1) amend to reflect her address change of September, 1990; (2) get Ms. Wade to put money into NEF, and (2) amend the application to reflect Ms. Wade's media interests, and (3) obtain money from Ms. Wade to pay NEF's prosecution expenses. Ms. Holt did none of those things without prompting: (1) her September, 1990 address change was not reflected in an amendment until March, 1991 (see Exhibit 6 hereto); (2) an April, 1990 amendment to update Ms. Wade's media interests was received by Ms. Holt from her counsel but not returned to them for 14 months -- until June, 1991, 14 months later (see Exhibit 15 hereto); and (3) Ms. Wade had to write Ms. Holt to take the initiative to put money into NEF, going so far as to suggest who Ms. Holt should pay and why. See Exhibit 14 hereto.)^{6/}

^{6/} Therein Ms. Wade wrote that she had "tried several times to reach you by telephone with no success. I'm anxious to transfer funds to Northeast Florida Broadcasting Corporation....You may wish to consider partial payment to Mr. Gurley and our attorney as both of these gentlemen have an ongoing relationship with our media consultant and know they will be paid. You may enclosed [sic] a note with partial payment noting the rest of their payment will be forthcoming." Exhibit 14 hereto.

Ms. Holt testified that she spoke with Ms. Wade "maybe about 25 or 30" times since December, 1989. Tr. 340. That testimony has to be false. They couldn't have talked about very much if Ms. Wade had to take the initiative on the only matter nonvoting shareholders are supposed to talk to voting shareholders about -- putting money into the application.

Like Ms. Holt, Ms. Wade got involved in the project through Mr. Mims. Wade Dep. Tr. 4-5. In the latter half of 1989, but before Mr. Mims met Ms. Holt, Ms. Wade met Mr. Mims at a social gathering in Washington. Tr. 383, 394, 405-406; Wade Dep. Tr. 6. Ms. Wade told Mr. Mims that she was interested in the Jacksonville area. Tr. 394.

Mr. Mims arranged for Ms. Holt to call Ms. Wade about the Baldwin frequency. Tr. 383, 406. Mr. Mims also arranged for Ms. Wade's partner in another FM proceeding (Martinez, GA) to call Ms. Wade. Tr. 383. Mr. Winston is also counsel for the Martinez applicant. Tr. 383. That applicant is a 25/75 voting/nonvoting stock corporation just like NEF. Wade Tr. 33, 37-38.

She never requested nor received any written material from Mr. Mims. Tr. 385, Wade Dep. Tr. 11, 13. Nor did she give him any written material about herself. Tr. 385. She doesn't know where Mr. Mims' office is, who he works for, whether he is a broadcaster, or what he does as a media consultant. Wade Dep. Tr. 5, 10, 12, 66. When asked why Mr. Mims travels about the country setting up applications, Ms. Wade didn't have a clue:

Going back to the time that I met him, we had some discussions in general about my interest at that time. He told me that he was interested in helping people and he had some knowledge in this area. I assumed that he likes to help facilitate this kind of thing.

He's an older man and I think he just maybe does this out of interest in helping others. He might not otherwise get together as a facilitator. That's a conjecture on my part.

My understanding in talking to him was that he had some experience in this area, he's an older gentleman, he seemed very nice. I think he just is a nice person. He likes to help people to this sort of thing. There are people in the world who have had some degree of success.

Tr. 384, 407.

Ms. Wade's commitment to this application includes a pledge of \$203,000 for prosecution expenses. Notwithstanding the repayment provisions in the NEF's December 13, 1989 Loan Agreement (Exhibit 13 hereto), the loan is actually unsecured. Tr. 350; Holt Dep. Tr. 83, 118. However, Ms. Wade did not do the types of things a normal investor would do if she were about to spend \$203,000 without security for repayment. She did not review any documents on the economics of the market and conditions of broadcast stations in the Jacksonville area. Tr. 387-388; Wade Dep. Tr. 16-17. She knew nothing of any background of Ms. Holt in running a commercial business, and she understood that Ms. Holt had no broadcast experience. Tr. 388-389.^{7/} She (and Ms. Holt, apparently) acquiesced without negotiation in the suggestion of NEF's counsel that the equity split should be 25/75. Tr. 400-402. Ms. Wade acquiesced in holding only nonvoting stock; Ms. Holt doesn't know why Ms. Wade did that. Holt Tr. 69.

In short, nobody was running the store. Ms. Holt had no idea what was expected of her. Ms. Wade simply put up \$203,000 on the strength of a social meeting with a stranger. Although Ms. Wade at least took the initiative to get NEF funded and get its prosecution expenses paid, it was Mr. Mims who completely orchestrated NEF's formation. It is nothing less than pitiful that at this late date, Ms. Holt and Ms. Wade do not even know who, if anyone, pays Mr. Mims.

^{7/} Ms. Holt had no previous broadcast experience. Tr. 334, 355. Although Ms. Holt testified that she had "written children's programming for a New York radio [station]." However, she did not claim that in NEF's application or direct case. Tr. 334. Actually, Ms. Holt has not set foot in a radio station since 1988. Tr. 355.

Discussion.

NEF is so palpably a sham that special issues should be designated on that subject alone. See Perry Television, Inc., 5 FCC Rcd 1567 (Rev. Bd. 1990). Special sham and real party issues were routinely designated in the Sonrise Management Services cases; see discussion in Hawthorne FM Partnership, 5 FCC Rcd 5194 (ALJ 1990). On facts of comparable weight, they are routinely designated now (for a recent example see Playa del Sol Broadcasters, FCC 91M-2042 (released July 2, 1991) (Exhibit 16 hereto). Where the formation and purpose of an applicant are controlled by an outside party, it will be disqualified as a sham. See Metroplex Communications, Inc., 5 FCC Rcd 5610 (1990).

A scheme to establish a sham application to hide the involvement of a real party like Joseph Mims abuses the Commission's processes. The Commission has not hesitated to take note of such activities by other application mills. See Abuses of the Commission's Processes, 3 FCC Rcd 4740 (released August 4, 1988) (designating investigation into applications promoted by Dr. Bernard Boozer).

Where a party so dominates an applicant that he has a hand in all of its affairs, a real party in interest issue must also be added. Key Broadcasting Corp., 3 FCC Rcd 6587 ¶6 (ALJ 1988). "The test for determining whether a third person is a real party in interest is whether that person has an ownership interest, or will be in a position to actually or potentially control the operation of the station." Arnold L. Chase, 61 RR2d 111, 135 (1986), citing KOWL, Inc., 49 FCC2d 962 (Rev. Bd. 1974); see also American International Development, 43 RR2d 411 (1978). Mr. Mims' complete domination of the applicant is sufficient under this test to support a real party issue.

III. FINANCIAL ISSUES

The discussion above also demonstrates that NEF is not financially qualified. Ms. Wade arranged for the financing from First Georgia Bank. Exhibits 17 and 18 hereto; Tr. 403. First Georgia is located in Kingsland, Georgia, a town of about 2000 in south Georgia between the Okefenokee Swamp and the Atlantic Ocean. The bank presumably does not do broadcast lending as a major line of business.

As noted above, Ms. Wade and Mr. Mims first met on Saturday, December 9, 1989; thus, the first day on which Ms. Wade could have contacted the bank on NEF's behalf would have been Monday, December 11 -- two days before Ms. Holt signed NEF's application. The bank letter itself, Exhibit 18 hereto, was signed on December 12, 1989, a day later. Ms. Wade obtained the letter; Ms. Holt did nothing to assist in obtaining it. Holt Dep. Tr. 48. Ms. Holt did not know how it happened that Ms. Wade invested \$203,000. Holt Dep. Tr. 43.

The bank had documentation on file concerning Ms. Wade's financial ability. Tr. 403. However, the letter does not call for Ms. Wade to provide a personal guarantee or to otherwise be involved in securing the loan. Exhibit 18 hereto. Nonetheless, Ms. Holt thinks Ms. Wade is liable personally for repayment "because they're basing this letter on the strength of Dorothy Wade's financial status or whatever." Holt Dep. Tr. 86.

Ms. Wade did not behave as thought she expected to be liable for repayment. She conducted no research on the market. Tr. 387-388. She knew little about Ms. Holt's background. Ms. Wade was not aware of whether Ms. Holt had run a commercial business before and she understood that Ms. Holt had no broadcast experience. Tr. 388-389.